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Letter dated 12 November 2009 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and the Prosecutor (see annex II) of the International Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I should be grateful if you would transmit these assessments to the members of the Security Council.

(*Signed*) Patrick **Robinson**
President

09-60845 (E) 251109

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Annex I

Assessment and report of Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Council resolution 1534 (2004), covering the period from 15 May to 15 November 2009

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1. This report is submitted pursuant to Security Council resolution 1534 (2004) adopted on 26 March 2004 in which the Council, in paragraph 6 of the resolution, requested the International Tribunal for the Former Yugoslavia ("Tribunal") "to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the Completion Strategy of the International Tribunal, explaining what measures have been taken to implement the Completion Strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions".[1]

[1] The present report should be read in conjunction with the previous 11 reports submitted pursuant to Security Council resolution 1534 (2004): S/2004/420 of 24 May 2004; S/2004/897 of 23 November 2004; S/2005/343 of 25 May 2005; S/2005/781 of 14 December 2005; S/2006/353 of 31 May 2006; S/2006/898 of 16 November 2006; S/2007/283 of 16 May 2007; S/2007/663 of 12 November 2007; S/2008/326 of 14 May 2008; S/2008/729 of 24 November 2008; and S/2009/252 of 18 May 2009.

2. As requested by the Secretary-General,[2] following instruction from the Security Council, this report complies with recommendation (m) of paragraph 259 of the report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals,[3] and reports to the Council on the Tribunal's progress on the tasks listed in recommendation (l) of that paragraph.

I. Introduction

3. Of the 161 accused indicted by the Tribunal, only one accused remains in the pretrial stage awaiting the commencement of trial, and the start of that trial is imminent.[4] Regrettably, two accused, Ratko Mladić and Goran Hadžić, are still at large.[5] A total of 24 accused are presently on trial[6] and another 13 have appeals pending.[7] All other cases have been completed.

4. There are eight cases at the trial stage and one at the judgement drafting stage. Five cases will be completed during the course of 2010, three during the first half of 2011 and the remaining case, that of Radovan Karadžić, is currently estimated to be completed by September 2012.[8]

5. There has been slippage in the trial schedule, resulting from a number of factors not immediately within the Tribunal's control, including the death of counsel, witness intimidation, illness of accused, and the need to assign counsel to self-represented accused Karadžić following his refusal to attend his trial. This delay in the completion of trials naturally has ramifications for the expeditious completion of appellate activity. Our assessment at this time is that the slippage in our trial schedule will have minimal impact on our estimated completion date of all appeals by mid-2013, provided a significant redeployment of trial resources is made to the Appeals Chamber during 2010 and 2011. As explained in my previous report, an assessment made by the Tribunal identifies as necessary the transfer of four Tribunal Judges and four Judges of the International Criminal Tribunal for Rwanda to the Appeals Chamber in 2010 and 2011. This will allow the Tribunal to form three Appeals Chamber benches to deal with an anticipated total of 24 appeal cases. Each appellate Judge would therefore be assigned six or seven appeals. A total of 13 appeals would be disposed of in 2011 and eight in 2012. Nine appeal Judges would complete their appeals in 2012 and six appeal Judges would complete their work on two appeals during the first half of 2013. Five of those six Judges will complete the remaining appeal, that of Karadžić, by February 2014. While these are our currently anticipated dates for completion, all possible measures will be taken to expedite our proceedings and shorten these anticipated times.

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[2] Letter to the President of the International Tribunal for the Former Yugoslavia from the Secretary-General dated 8 October 2009.

[3] S/2009/258.

[4] Enclosure IV.

[5] Enclosure III.

[6] Enclosure II.

[7] Enclosures V-VII.

[8] Enclosure VIII.

6. The redeployment of resources to the Appeals Chamber is part of the Tribunal's downsizing strategy, and the overall number of Judges will decrease in 2010 and 2011. It is anticipated that all but two *ad litem* Judges will have departed the Tribunal in 2010 and 2011 and that four permanent Judges will also depart in 2010 and 2011. The two remaining *ad litem* Judges are those assigned to the *Karadžić* case. This decrease in overall resources is reflected in the budget submitted by the Tribunal, which shows a decrease in staff, Tribunal wide, by approximately 40 per cent over the next two years.

7. I note that Security Council resolution 1877 (2009) extended the terms of office of the Tribunal's trial and *ad litem* Judges until 31 December 2010, in line with the mandate of its appeal Judges. In light of the trial and appeal schedule presented to the Security Council, it is clear that this extension is insufficient and that a number of Judges will require further extensions of their terms of office. I refer to the provisions of Security Council resolution 1877 (2009) and the express commitment of the Council to address this matter before the end of this year. I urge the Council to take this matter up as quickly as possible and grant extensions to the Judges in line with the anticipated trial and appeal schedules. An extension on this basis would align the mandates of the Judges with those of Tribunal staff, who in accordance with General Assembly resolution 63/256 are being offered contracts in line with dates of planned post reductions consistent with the relevant prevailing trial schedules. This measure was adopted by the General Assembly to remove staff uncertainty regarding their future employment at the Tribunal and as an incentive to staff to remain with the Tribunal until their services are no longer required. Nonetheless, while this measure is welcomed, it has failed to stem an alarming attrition rate of approximately one staff member per day.

8. During the reporting period, three new trials commenced. One trial remains to start in December 2009. As in previous reporting periods, the Trial Chambers continued to perform at maximum capacity in relation to trial proceedings, with seven, and during some periods, eight trials being heard simultaneously. Additionally, contempt cases were heard during breaks in the trial schedules. As the Tribunal has only three courtrooms, two separate sittings are held each day from early morning into the evening.

9. The expeditious conduct of some of the Tribunal's trials was again hindered by contempt allegations, which are discussed in more detail below. The Tribunal is taking all possible measures to limit the impact of these allegations on the conduct of the proceedings, but where the alleged effect of the contempt is to prevent witnesses from appearing before the Tribunal, the continuation of those proceedings is substantially hindered. Due to allegations of this kind, one trial has been suspended for seven months pending the resolution of the contempt issue arising therein, so as to protect the integrity of the proceedings.

10. The expeditious conduct of the Tribunal's proceedings was also hindered by the departure of three of its experienced permanent Judges and the time taken to secure their replacements. One permanent Judge of the Appeals Chamber departed in May 2009, but a replacement was not secured until September 2009. To minimize the impact of that Judge's departure, an existing Trial Chamber Judge was assigned to the Appeals Chamber, while he is also finishing a multi-accused case at trial where he sits as Presiding Judge. That trial is now complete and in the judgement writing phase, but has been delayed by approximately three months.

11. During the reporting period, three appeal cases were heard and judgement was issued in one of the appeals on 12 November 2009. The other two judgements should be rendered early next year. Five appeals are currently pending. The Appeals Chamber also continued to work at maximum capacity on appeals from the International Criminal Tribunal for Rwanda.[9]

12. The Tribunal has transferred all low- and mid-level accused from its trial docket in accordance with Security Council resolution 1503 (2003). The Prosecutor, with the assistance of the Organization for Security and Cooperation in Europe (OSCE), continues to monitor the progress of all referred proceedings still ongoing in the region. Additionally, the bench constituted to handle requests for confidential information for use in national proceedings continued to function in an efficient manner, rendering nine decisions during the reporting period.

II. Measures taken to implement the Completion Strategy

13. An appreciation of the steps taken by the Trial and Appeals Chambers to make certain that their proceedings are conducted in a fair and expeditious manner is best made in the context of each specific case. Accordingly, the following contains a brief summary of the cases and appeals before us and the solutions that have been adopted to meet the specific challenges they raise.

A. Pretrial proceedings

14. Preparations are actively being made for the commencement of the trial of *Zdravko Tolimir* in December 2009. The indictment contains eight counts, including charges of genocide and crimes against humanity allegedly committed at more than 20 different crime sites. During the course of this year, following deadlines set by the pretrial Judge, the Prosecution has filed motions for the admission of written evidence in lieu of oral testimony and motions for judicial notice of adjudicated facts. The accused has filed his pretrial brief and notification of alibi defence. The main issue impacting the expeditious preparation of the case continues to be that the accused has thus far elected to represent himself. At status conferences, the pretrial Judge has encouraged the accused to reconsider his choice to defend himself. Due to his self-representation, all documents served on the accused, including submissions, decisions and orders, have to be translated into Bosnian/Croatian/Serbian. As a consequence, progress has not been as swift as it would otherwise have been. However, on the instructions of the pretrial Judge, the translation of important filings has been prioritized with a view to expediting the procedure.

15. Notably, had Tolimir been transferred earlier to the custody of the Tribunal, he could have been tried with his co-accused in the *Popović et al.* trial, but now he will have to be tried alone.

[9] Enclosures V-VII.

B. Trial proceedings

16. The multi-accused case of *Popović et al.* — with seven accused — contains eight counts, including charges of genocide and crimes against humanity allegedly committed at more than 20 different crime sites. The original estimate for the length of the trial was 29 months. Efforts have been made by the Trial Chamber throughout the proceedings to ensure that the parties present their cases as efficiently as possible, and these efforts have been generally successful. The Trial Chamber has set deadlines that have been effective in expediting the actions of the parties. For example, both the Prosecution and the Defence have dropped witnesses and used rule 92 *ter* evidence in place of oral testimony. The defence cases of the seven accused were completed on 14 March 2009. On 27 March, the Trial Chamber ordered that final trial briefs were to be filed by 30 June 2009 and closing arguments heard from 20 July 2009. In accordance with an order of the Trial Chamber, the final trial briefs were filed on 30 July 2009 and the closing arguments began on 2 September 2009. The case has lasted somewhat longer than originally anticipated, owing to a number of factors. First, with seven accused, the trial has been unusually large. Secondly, it is very complex — for example, there are two alleged joint criminal enterprises, a large number of alleged forces involved and over 7,000 alleged victims, and the alleged actions of the accused are interrelated. Finally, there were delays caused by developments that could not have been foreseen at the start of the trial: significant new evidence emerged recently that could not have been reasonably anticipated, and was then tendered in the trial. As a result, parties were permitted to present further evidence after the end of the seven Defence cases. It is anticipated that the Judgement will be rendered early in 2010.

17. In the *Vlastimir Đorđević* case, the trial commenced on 27 January 2009. The accused is charged with five counts of crimes against humanity and violations of the laws or customs of war allegedly committed in Kosovo in 1999. Although there is only one accused, the case is significantly complex given the number of crime sites and volume of evidence. Initially, the Prosecution proposed a total of 132 witnesses and 4,489 exhibits. Following orders made by the Chamber, the Prosecution withdrew 17 witnesses before the start of the trial. The evidence of a further 10 witnesses was given entirely in written form. Pursuant to orders made by the Trial Chamber, the evidence-in-chief of some 90 witnesses was received in the form of a written statement or transcript, with most of these witnesses being required to appear in court only for cross-examination. By 29 September 2009, the Chamber had heard the testimony of all but two of the 104 witnesses. Due to medical and other circumstances of the two remaining Prosecution witnesses, the Prosecution did not conclude its case until 28 October 2009. The Defence case will commence on 30 November 2009. It is estimated that the trial will last 16 months, and steady progress continues to be made.

18. The multi-accused case of *Prosecutor v. Ante Gotovina et al.* — with three accused — involves nine counts of crimes against humanity and violations of the laws or customs of war allegedly committed against the Serb population in 14 municipalities in the southern portion of the Krajina region in Croatia in 1995. The trial commenced on 11 March 2008. The Prosecution's case was concluded on 5 March 2009. Encouraged by the Chamber, the Prosecution tendered witness statements pursuant to rule 92 *ter* for 72 of the 78 witnesses. Significant time, however, was still required for cross-examination by the three Defence teams, in

particular considering the vast amount of evidentiary material submitted by the Prosecution. This meant that the overall time for the Prosecution's case was extended well beyond the original estimates. The Defence case started on 28 May 2009. Although the Defence requested more time for the presentation of their cases, the Chamber granted them 210 hours in total, meaning that the conclusion of the Defence's presentation of evidence would occur in mid-2010. The Chamber further encouraged the Defence to tender statements under rule 92 *bis* instead of hearing *viva voce* testimony and to shorten the testimony in court by using rule 92 *ter*, and requested the Defence teams to review their witness lists to eliminate duplicative evidence. Since then, the Defence case has proceeded faster than expected, in particular since the Defence has dropped a number of witnesses and has used less time for examination-in-chief than foreseen. The third Defence case can therefore be expected to conclude in the beginning of 2010. There has been extensive litigation regarding unfulfilled requests for production of documents by Croatia. This matter has absorbed a great deal of resources on the part of the parties and the Chamber, although the impact upon the trial schedule has so far been minimal since few trial hearings have been held in this regard. After extensive submissions by the parties and Croatia, this matter is currently pending before the Chamber. The matter might have an impact on the further scheduling of this case. Taking into account the large amount of evidence received in the case, the judgement is estimated to be rendered during the spring of 2010.

19. The trial of *Momčilo Perišić* began on 2 October 2008. The accused is charged with 13 counts in relation to crimes against humanity and violations of the laws or customs of war allegedly committed in Sarajevo, Zagreb and Srebrenica. Pretrial management of this case resulted in a 60 per cent reduction of the Prosecution case-in-chief. The unavailability of Prosecution witnesses has caused some difficulties. The Chamber encouraged the Prosecution to bring more witnesses to The Hague and to keep them on standby to avoid gaps, and this ameliorated the situation. The Chamber also admitted into evidence the testimony of 27 witnesses without requiring them to appear for cross-examination. The Prosecution is due to close its case in November 2009. The case is estimated to last 24 months, with the judgement expected to be delivered in October 2010.

20. In the case of *Prosecutor v. Jovica Stanišić* and *Franko Simatović*, the two accused are charged with four counts of crimes against humanity and one count of war crimes. Originally intended to start in March 2008, the trial was delayed due to the ill health of Stanišić. In order to be able to proceed, the Trial Chamber established a videoconference link, allowing Stanišić to follow the proceedings from the United Nations Detention Unit. On 28 April 2008, a pretrial conference was held and the trial commenced, with opening statements being heard in Stanišić's absence. Stanišić refused to use the videoconference link and, after one witness was heard, the proceedings were again adjourned due to Stanišić's physical illness and subsequent hospitalization. In May 2008, the Appeals Chamber issued a ruling overturning the Trial Chamber's decision to establish the videoconference link and granted the Defence request for adjournment of the proceedings for a minimum period of three months. The case was therefore effectively returned to the stage of pretrial proceedings. Following the receipt of medical reports, the Trial Chamber extended the adjournment for another three months and ordered further medical reports. After receiving these reports, the Trial Chamber decided that proceedings could continue if consideration was given to Stanišić's health needs. Considering

these medical needs and the anticipated delays they might cause, the Trial Chamber decided to start the case in parallel to other cases it was hearing. A pretrial conference was held on 2 June 2009, and the Prosecution presented its opening statement on 9 and 10 June 2009. The presentation of the Prosecution's case-in-chief commenced on 29 June 2009. On 2 August 2009, lead counsel for Simatović passed away and the case had to adjourn. A new lead counsel and co-counsel were assigned, and the Chamber has ensured that the Prosecution has fully cooperated with the new Defence team and assisted it with disclosure. The new Simatović Defence team requested time for preparations and filed a motion to adjourn the proceedings for eight months. On 15 October 2009, the Trial Chamber partially granted this motion and decided that the hearings should only be adjourned until the week of 30 November 2009.

21. The case of *Jadranko Prlic et al.* — with six accused — is exceptionally complicated, involving 26 counts of war crimes and crimes against humanity, related to approximately 70 crime sites, allegedly committed by Bosnian Croats against Bosnian Muslims in Bosnia and Herzegovina from 18 November 1991 to about April 1994. The trial opened on 26 April 2006, with the original estimate for the length of the trial being three years. When the Chamber became aware that this time would likely be insufficient given the unusual complexity of the case, it reduced the Prosecution case by 25 percent and limited the presentation of the Defence cases to even less time than the Prosecution received. Translation issues, the logistics of Defence witness attendance and the poor health of several of the accused have all led to further delays. In an effort to offset this situation, the Chamber has encouraged the Defence to present evidence in the form of written statements or transcripts of evidence given by witnesses in other proceedings before the Tribunal. Furthermore, the Trial Chamber has strictly enforced the time limits on the Defence, discouraged duplicative evidence and entertained Defence motions for the admission of documents from the bar table rather than requiring each document to be tendered through a witness on the stand, thus saving time in court. The Trial Chamber has also imposed time limits on the parties for the filing of motions for reconsideration of decisions. Based on the complexity of the case, it is anticipated at this stage that the Defence case will end by the second half of 2010. Hearings may run into 2011.

22. In the case against *Vojislav Šešelj*, the accused is charged with 14 counts of crimes against humanity and violations of the laws or customs of war allegedly committed in the territory of Croatia, in large parts of Bosnia and Herzegovina and in Vojvodina (Serbia), from August 1991 until September 1993. The first Prosecution witness was heard on 11 December 2007. Of the 100 witnesses scheduled by the Prosecution, the Trial Chamber has thus far heard 73 witnesses. The hearing of the remaining Prosecution witnesses remains adjourned due to allegations of witness intimidation. The Chamber is considering the possibility of resuming the hearings early next year at the latest. The trial, which was scheduled to take 14 months, is now anticipated to take 21 months due to these and other unforeseen difficulties, including a motion for disqualification of one of the Judges and difficulties experienced by the Prosecution in obtaining witness testimony. In order to expedite the proceedings, the Trial Chamber decided to make use of written evidence for at least 20 witnesses, including unavailable witnesses pursuant to rule 92 *quater*, despite the constant refusal of the self-represented accused to accept the

admission of such evidence and his demand to cross-examine any witness whose testimony is presented in writing.

23. The anticipated start of the *Stanišić and Župljanin* case was delayed by two months due to the resignations of a number of Judges over the preceding months. Following the swearing-in of three new Judges on 2 September 2009, two of whom were assigned to this trial, the pretrial conference was held on 4 September 2009, and the trial commenced on 14 September 2009. The first witness was called on 16 September 2009, and the Prosecution case continues. Using its powers at the pretrial conference, the Trial Chamber reduced the Prosecution's witness list by 20 per cent, from 162 to 131 witnesses, and allotted the Prosecution 212 hours for the presentation of its case (a reduction of 27 per cent from the requested 292 hours). On this basis, the Prosecution's presentation of evidence is estimated to end on 1 April 2010. The Prosecution is tendering evidence in writing to admit prior testimony from other cases to reduce the length of the trial. The Trial Chamber has granted several Prosecution motions for judicial notice of adjudicated facts and is considering others, together with applications to admit into evidence the testimony of approximately 30 witnesses without requiring them to appear for cross-examination.

24. Closing arguments were heard in the *Lukić and Lukić* trial, as scheduled, on 19 and 20 May 2009. The Judgement, in which Milan Lukić was sentenced to life imprisonment and Sredoje Lukić to 30 years of imprisonment, was delivered on schedule only two months later, on 20 July 2009.

25. In the *Radovan Karadžić* case, the accused was a founding member and President of the Serbian Democratic Party from its establishment on 12 July 1990 until his resignation on 19 July 1996. From 17 December 1992 until his resignation, he was also President of Republika Srpska. The third amended indictment, filed on 27 February 2009, charges the accused with 11 counts of genocide, crimes against humanity and violations of the laws or customs of war. In April 2009, the Chamber issued a decision dealing with six preliminary motions in which the accused challenged the jurisdiction of the Tribunal over him, as well as a decision dealing with two preliminary motions in which the accused alleged defects in the form of the indictment. In July 2009, the Chamber issued a decision on the accused's "Holbrooke Agreement" motion, finding that, even if the "Holbrooke Agreement" existed, there was no evidence to prove that the Security Council was directly involved in the making or implementation of the agreement, or that Richard Holbrooke acted with the authority of the Council when he entered into any such agreement. The Appeals Chamber upheld the Trial Chamber's decision in October 2009. The accused also sought the disqualification of two of the Judges assigned to the case, both of which were denied by a three-Judge panel.

26. Despite these and various other factors affecting the pace of the pretrial proceedings, including the accused's decision to represent himself, the pretrial Judge declared the case ready for trial during a status conference on 20 August 2009. During a further status conference on 9 September 2009, and following a submission by the accused requesting 10 additional months to prepare his defence, the Chamber set the date for commencement of trial at 19 October 2009, with a pretrial conference to be held on 6 October 2009. At the pretrial conference, the Chamber issued its decision on the application of rule 73 *bis* (C) and (D), allocating the Prosecution 300 hours for the presentation of its case and reducing the number

of crime sites and incidents that would be the subject of the trial. The accused appealed the Chamber's decision on the commencement of trial and the Appeals Chamber subsequently determined that the trial should proceed, as planned, with a delay of one week to allow the accused to study the updated version of the indictment reflecting the Chamber's rule 73 *bis* decision.

27. The trial proceedings opened on 26 October 2009, but in the absence of the accused, who maintained that he had not had enough time to prepare. After several warnings to the accused about the consequences of his continued non-attendance, the Chamber, on 5 November 2009, ordered the Registrar to appoint a defence counsel to begin preparing to represent the accused at trial, should the Chamber order him to do so, and adjourned until 1 March 2010 to allow the appointed counsel sufficient preparation time. The accused thereby retains his self-represented status, but this may be forfeited should he not appear at the continuation of the trial on 1 March 2010, or should he engage in any other obstructive conduct in the future.

28. When the trial resumes, 219 witnesses are expected to be called by the Prosecution to give evidence either in court or in writing. As a consequence of the Chamber's encouragement to the Prosecution to reduce the size of its case, 71 witnesses have now been designated as "reserve" witnesses and could, under certain circumstances, still be called by the Prosecution. In addition to these witnesses, the Prosecution has filed 15 motions for admission of written evidence for more than 190 witnesses. The Chamber has already issued decisions on five of these motions and is in the process of considering the remainder. Furthermore, the Chamber has issued three decisions taking judicial notice of a significant number of adjudicated facts and is still to issue a fourth decision. Similarly, the Prosecution intends to tender into evidence more than 20,000 exhibits and the Chamber is therefore actively considering taking judicial notice of a significant amount of documentary evidence.

29. Finally, since 8 July 2009, the accused has filed 24 motions requesting the Trial Chamber to issue binding orders compelling the Governments of various States to produce categories of documents that he intends to use during his trial. In order to determine these motions, the Chamber invited each of the relevant States to submit their responses to the accused's motions within a specified time frame. To date, the Chamber has issued one binding order and has rejected the application for another one. Ten motions are still pending, as the remaining motions have been withdrawn by the accused. The Chamber is taking all necessary steps to move the resolution of binding orders motions forward, bearing in mind that it is in the interests of all parties involved that requests for documents are, if possible, dealt with on a voluntary basis.

C. Contempt proceedings

30. The Tribunal's administration of justice continued to be disrupted by contempt allegations. During the reporting period, two contempt trials were heard and the trials were concluded, as detailed below. Currently, there are nine contempt cases ongoing and the Tribunal is taking what measures it can to ensure that those cases are concluded as quickly as possible and without disrupting the ongoing trial process. Unfortunately, in one case, which involves alleged widespread intimidation

of Prosecution witnesses, this has not been possible, and the case in that matter remains adjourned.

31. On 21 January 2009, the Trial Chamber issued an order in lieu of an indictment charging Vojislav Šešelj with contempt for having disclosed, in a book that he authored, confidential information about witnesses in the case against him, including excerpts of one of the witnesses' written statements. The Chamber issued its Judgement on 24 July 2009, finding Šešelj guilty of contempt, sentencing him to 15 months of imprisonment and ordering him to withdraw the contentious book from his website. The implementation of the Chamber's order to withdraw the book from Šešelj's website remains unresolved. The Registry is currently working with the providers of the website to ensure implementation of the Trial Chamber's order.

32. In the contempt case of *Florence Hartmann*, the trial was conducted from 15 to 17 June and on 1 July 2009, and the trial Judgement was rendered on 14 September 2009. The accused was found guilty of two counts of contempt for knowingly and wilfully interfering with the administration of justice by disclosing confidential information arising from the *Slobodan Milošević* trial. She was sentenced to pay a fine of €7,000. The case is currently on appeal.

33. As indicated in my previous report, we have established a working group to assess the procedural and substantive aspects of contempt proceedings and recommend methods of expediting their adjudication. The working group's final report, submitted in July 2009, was discussed by the Judges in September 2009. The consideration of amendments to the Tribunal's contempt procedures will be discussed further at the plenary of Judges, scheduled for 10 December 2009. It is hoped that amendments to the current procedural rules will expedite contempt cases at the Tribunal.

D. Appeal proceedings

34. One appeal Judgement was issued during the reporting period in the *Dragomir Milošević* case (12 November 2009). Two appeals from contempt Judgements (*Dragan Jokić* and *Astrit Haraqija and Bajrush Morina*) were rendered. A total of 18 interlocutory appeal decisions were issued, as well as one miscellaneous post-conviction appeal decision.

35. There are currently five appeals from trial Judgements pending before the Appeals Chamber: *Ramush Haradinaj et al.*; *Ljube Boškoski and Johan Tarčulovski*; *Rasim Delić*; *Milan Lukić and Sredoje Lukić*; and *Nikola Šainović et al.* [formerly *Milan Milutinović et al.*]. An additional appeal is pending from a contempt Judgement (*Vojislav Šešelj*) with relatively complex issues to address (including a request for disqualification of two of the Judges on the bench). The Judgement in the *Hartmann* case is also in the early phase of the appeal process. During this reporting period, appeal hearings were conducted in the *Dragomir Milošević*, *Ramush Haradinaj et al.* and *Ljube Boškoski and Johan Tarčulovski* cases, and a hearing is to be held in January 2010 in the Rasim Delić case. The briefing stage of the appeal process prior to the hearing is under way in the *Milan Lukić and Sredoje Lukić* and *Nikola Šainović et al.* cases.

36. Regarding the *Rasim Delić* case, translation issues have increased the duration of this appeal. In order to ameliorate this situation, we have been working closely

with the Conference and Language Service Section in order to ensure that the necessary translations are being completed as expeditiously as possible. The appeal hearing is anticipated to be held in January 2010.

37. In the *Milan Lukić and Sredoje Lukić* case, the Chamber granted Milan Lukić's request for extension of time for filing of his brief and ordered that his appellant brief be filed no later than 17 December 2009. The Prosecution's respondent brief is to be filed no later than 5 February 2010.

38. The *Nikola Šainović et al.* case deserves special mention. Five convicted persons filed their appeals, and with the addition of an appeal by the Prosecution, the case is among the largest multi-accused appeals in the Tribunal's history. Due to the volume and complexity of the case,[10] a number of time extensions for filings have been requested and granted, including those for filing the notices of appeal and the appellants' briefs. Most recently, the pre-appeal Judge on 1 October 2009 granted a Prosecution motion for a 75-day extension to 16 January 2010 for filing its respondent's briefs. The number of staff assigned to support the Appeals Chamber in this case has been increased to a number reflective of its size and complexity, a measure designed to further the prospects for expeditious appellate adjudication. Translation of the trial judgement (the longest ever) into Bosnian/Croatian/Serbian is forecast for completion in April 2010. Following translation, there remains the possibility of amendments to the existing grounds of appeal, an exigency that the Appeals Chamber has formally noted could prolong scheduling of the hearing in the case. Additionally, ongoing evidentiary disclosure to the Defence by the Prosecution, as well as ongoing trial proceedings in factually related cases (e.g., *Đorđević*) may lead to motions for consideration of additional evidence. One such motion recently filed exceeds 300 pages. During this reporting period, 20 pre-appeal decisions and orders were rendered in this case, including several decisions on motions for provisional release and those seeking variation of grounds of appeal.

39. Proceedings in respect of 120 of the total 161 persons indicted by the Tribunal have been completed. It is only the two indictees — Ratko Mladić and Goran Hadžić — who still need to be brought to face justice, and their apprehension relies on the cooperation of the international community.[11] The achievements of the Tribunal far surpass that of any other international or hybrid court, both in respect of the number of persons tried and its contribution to international criminal law, and demonstrate the Tribunal's commitment to the expeditious completion of its mandate.

III. Retention of staff

40. As the Tribunal nears the end of its mandate, highly qualified and essential staff continue to leave the Tribunal at alarming rates for more secure employment elsewhere. I have repeatedly stressed to the Security Council that we need its assistance to stem this tide of departures. Inadequate and inexperienced staffing for the Tribunal will slow trial and appellate proceedings and place a much heavier

[10] The trial Judgement is over 1,700 pages, the length of the Defence appeal briefs varies between 45,000 and 60,000 words and the Prosecution appeal brief is almost 23,000 words.

[11] Enclosure III.

financial burden on the international community in the long run. I acknowledge the efforts made to assist the Tribunal by the General Assembly in its resolution 63/256 of 24 December 2008, pursuant to which the Tribunal is able to offer critical staff longer contracts, thereby alleviating some of their job insecurity. However, this measure is insufficient, as it has not stemmed the tide of rapid staff departures and we are currently losing staff at the rate of one per day.

41. Critical to staff retention is the granting of internal status equal to that of staff of the Secretariat. This measure would allow our highly qualified staff to compete equally with other Secretariat staff for future employment in the United Nations system. I have continued to pursue this matter with the Office of Human Resources Management. While the Office has made concessions, those concessions have fallen short of equal internal status. We have been advised that our staff will fare better under the new Inspira recruitment system, coming into effect in January 2010. It is my belief that granting such a measure would enormously benefit the staff morale and contribute to their remaining with the Tribunal until their posts are abolished. Again, however, I doubt this measure will be enough to retain all of the staff we need.

42. Another incentive that would be very beneficial to our staff is the end of service grant recommended by the International Civil Service Commission, applicable to staff separating from the Organization upon completion of their contracts if they have served continuously for 10 years. Many of our staff have served over 10 years and the end-of-service grant would provide them an incentive to stay with the Tribunal until its work has been completed. The grant would ensure that our staff would have some income at separation, which would allow them time to look for new jobs upon, and not prior to, their departure from the Organization. Also highly beneficial to our staff would be their inclusion in the regime of continuing contracts, which is currently on the agenda of the General Assembly. Continuing appointments will offer some of the stability that we sorely need, and I urge you to ensure that, should this new regime be adopted, the staff of the Tribunal also benefit from it.

43. While the Tribunal continues to suffer from losses of staff, its actual vacancy rate remains remarkably low, due to the diligent management of its attrition rate. For example, when a single vacancy arises, the Tribunal conducts interviews, in most cases of around 15 applicants who have been identified by the Human Resources Section as being qualified for the post. While only one applicant will successfully secure the vacancy, the remaining applicants are placed on a roster should a similar vacancy arise in the future. The roster system has served the Tribunal well, but may have done so to the detriment of our staff. When a staff member leaves the Tribunal before the downsizing of his or her post, remaining staff members are invariably required to take on a higher workload until a new staff member is recruited. Additionally, a newly recruited staff member needs approximately three months of training before becoming a fully functioning employee of the Tribunal. Not only do the remaining staff members' duties increase, but they must also assume responsibility for the intensive training of their new colleagues.

44. Despite the management of the attrition rate in the past six months and the overall low vacancy rate, our vacancies have nevertheless doubled. This is primarily due to the current departures of staff whose posts are to be abolished in the next six months. It is simply not administratively attractive to seek to fill such short-term

vacancies, nor is there likely to be interest on the part of suitably qualified persons to fill these vacancies. This situation is likely to increase in the future and will have a devastating impact on the Tribunal's ability to complete its work expeditiously.

45. Furthermore, the constant need to employ new staff diverts the attention and resources of the Tribunal from its core function: the expeditious conduct of trials and appeals. For example, the preparation of a roster of candidates for any one vacancy in Chambers involves two senior staff members, one Tribunal Judge and one Human Resources Section representative conducting interviews for about two full days. While not every vacancy requires this process because a roster containing a sufficient number of candidates may already be in place, if we consider the loss of one staff member per day, this is a significant divergence of resources from the core business of the Tribunal. Thus, while the roster system allows the Tribunal to expertly manage its attrition rate, it does not significantly reduce the overall burden on remaining staff or reduce the impact on their morale occasioned by the constant departure of their colleagues. I urge the international community to exercise foresight and assist the Tribunal with incentive measures to retain its staff and reduce the burden on the institution of constant staff recruitment.

IV. Referral of cases

46. Between 2005 and 2007, the Tribunal referred a total of eight cases, involving 13 indicted accused of intermediate or lower rank, to national jurisdictions in accordance with Security Council resolutions 1503 (2003) and 1534 (2004). This significantly reduced the overall workload of the Tribunal, making it possible to bring the cases of the most senior leaders to trial as early as possible. The referral of these cases to national jurisdictions also served to forge the Tribunal's relationship with national judiciaries in the former Yugoslavia and strengthen the capacity of those jurisdictions in the prosecution and trial of violations of international humanitarian law.

47. The decisions on referral of cases were made by a specially appointed Referral Bench, followed by appeals against the referral decisions in some cases. As a result, 10 accused were transferred to Bosnia and Herzegovina, two to Croatia and one to Serbia for trial before a domestic court. Requests for the referral of four accused were denied due to the alleged level of responsibility and the gravity of the crimes charged, requiring that these cases be heard before the Tribunal. Possibilities for referrals were maximized. Accordingly, no cases eligible for referral according to the seniority criteria set by the Security Council remain before the Tribunal.

48. Of the 13 accused transferred to national jurisdictions, proceedings against nine have been concluded before the Court of Bosnia and Herzegovina, all resulting in convictions and sentences ranging from 7 to 34 years of imprisonment. Proceedings against four accused are still under way. During the reporting period, Milorad Trbić was convicted in the first instance and sentenced to 30 years of imprisonment and appeal proceedings are currently pending. The case of Rahim Ademi and Mirko Norac is also in the appeals phase, pending before the Supreme Court of Croatia. Vladimir Kovačević, the last of the 13 accused transferred to Serbia, has been deemed unfit to stand trial pending any change in his mental health status.

49. The Prosecution continues to monitor the ongoing cases with the assistance of OSCE. Under rule 11 *bis*, the Prosecution has the authority to request the Referral Bench to both revoke the referral order and formally request deferral of any case in which fair trial proceedings are not being conducted. To date, no such requests have been made.

V. Outreach

50. The Tribunal continued to engage actively with the communities of the former Yugoslavia during the reporting period. The main focus of its Outreach Programme (Outreach) is to provide information to key regional stakeholders and the wider public about the work of the Tribunal. During the reporting period, Outreach further strengthened the Tribunal's partnership with the region and facilitated the transfer of the Tribunal's expertise to national judiciaries.

51. Outreach continued its activities and dialogue with the stakeholders in the region through its offices in Sarajevo, Belgrade, Zagreb and Priština. They maintained communication with the key target groups, including the victims and affected communities, legal professionals, public officials and civil society leaders, through a variety of conferences, seminars, training sessions, radio programmes and other press events. In doing so, they were able to counter misperceptions about the Tribunal and promote its achievements and contribution to the establishment of the rule of law in the former Yugoslavia. In Kosovo, the Tribunal engaged directly with youth through meetings and discussions with high school students. In Bosnia and Herzegovina, Outreach held a series of meetings with media representatives to encourage them to report on the Tribunal and local war crimes proceedings in an unbiased and informed manner. Furthermore, rural communities were targeted through town hall meetings and programmes dedicated to the Tribunal on local television and radio stations.

52. Outreach also organized numerous visits to the Tribunal to enable members of the judiciary, journalists and students to meet with Tribunal staff members and openly discuss the legal and social issues facing their countries. These visits contributed towards increased understanding of the work and procedures of the Tribunal and strengthened contacts between the Tribunal and local communities. Outreach also implemented the use of videoconference technology to include those unable to travel to The Hague.

53. Outreach marked its tenth anniversary with the publication of transcripts from all "Bridging the gap" conferences, which were held in 2004 and 2005 in five of the most affected communities in Bosnia and Herzegovina. The publication, available in English and Bosnian/Croatian/Serbian, was also uploaded to the Tribunal's website.

54. The Tribunal's multilingual website remains one of the most important Outreach tools, with materials tailored for the general public, legal professionals and the media alike. In addition to legal documents, factsheets and feature sections, the website provides an interactive map of cases and webcasts of courtroom proceedings. The revamped website, launched in December 2008, has attracted more than three times the number of visitors as the previous website, most from the former Yugoslavia.

VI. Victims and witnesses

55. More than 5 500 witnesses from all over the world have been called to appear before the Tribunal in The Hague or at a designated location to testify via videoconference link. Most witnesses come from diverse and remote locations within the former Yugoslavia. The Victims and Witnesses Section assists with travel arrangements and accommodation and provides assistance for safe travel.

56. In order to minimize any negative consequences from testifying and prevent further trauma, the Victims and Witnesses Section also provides witnesses with psychosocial support. Some witnesses have experienced a range of difficulties — financial, health, protection, etc. — resulting from their participation in Tribunal proceedings. Witnesses who have suffered profound loss and injury encounter numerous adversities that can only be effectively addressed through the reconstruction of national structures conducive to a socially, economically and politically secure environment. The Tribunal's resources are insufficient to meet these needs. In the absence of any restitution or compensation programme, or specific budget for the provision of basic living essentials, the Victims and Witnesses Section endeavours to negotiate and encourage assistance to vulnerable witnesses via voluntary State contributions. However, this resource is very limited. In certain cases, the Victims and Witnesses Section has had to intervene to provide short-term assistance to witnesses urgently in need of basic necessities such as food, clothing or wood for heating.

57. Victims of the conflict in the former Yugoslavia have an undoubted right to compensation under international law for the crimes committed against them. This matter was brought to the attention of the Security Council in a letter dated 2 November 2000 from the Secretary-General addressed to the President of the Council, attaching a letter from the President of the Tribunal at that time, Judge Claude Jorda.[12] In that letter, President Jorda stated that the Tribunal's Judges were of the view that in order to bring about reconciliation in the former Yugoslavia and to ensure the restoration of peace, it was necessary that persons who were victims of crimes that fell within the jurisdiction of the Tribunal received compensation for their injuries. He requested the Secretary-General to bring the matter to the attention of the Council, so that it or some other organ to which it might refer the matter, would consider possible mechanisms for the payment of compensation, such as the creation of an international compensation commission.

58. In the debate that transpired in the Council at its 4240th meeting, on 30 November 2000, the issue of victims' compensation was identified as one of four remaining issues to be urgently addressed by the informal working group of the Security Council on the International Criminal Tribunals for the Former Yugoslavia and Rwanda.[13] However, it remains unresolved. The failure of the Council to properly address this issue constitutes a serious failing in the administration of justice to the victims of the former Yugoslavia. The Tribunal cannot, through the rendering of its judgements alone, bring peace and reconciliation to the victims of the region. Its judgements do not satisfy the right of victims under international law to compensation for their suffering.

[12] S/2000/1063, 3 November 2000.

[13] S/PV.4240, 30 November 2000.

59. I have brought this matter to the attention of the General Assembly and I urge the Security Council to consider the General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.[14] Those principles clearly identify the right of victims to compensation and clause 13 of the annex to the Declaration provides guidance to satisfying that right. It states that "[t]he establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm". If justice is to be achieved for the many victims of the atrocities that occurred in the former Yugoslavia, action must be taken by the Council to implement clause 13 of the annex to the Declaration. It is a basic right of victims and should no longer continue to be ignored by the international community with respect to victims in the former Yugoslavia.

VII. Cooperation of States

60. It is frustrating to again report that Ratko Mladić and Goran Hadžić continue to remain at large. I am, however, pleased to note the general agreement among members of the Security Council that there will be no impunity regardless of when these remaining fugitives are apprehended. I ask all States, especially those of the former Yugoslavia, to intensify their efforts and urgently deliver these fugitives to the Tribunal.

VIII. Residual Mechanism

61. On 21 May 2009, the Secretary-General published his report on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals (S/2009/258). On 8 October 2009, the Secretary-General advised the Tribunal of the Security Council's endorsement of the recommendations and requested that the Tribunal comply with recommendation (m) in paragraph 259 and report in detail on the Tribunal's implementation of the tasks identified under recommendation (l) of paragraph 259.

62. Each of the recommendations of the Secretary-General in paragraph 259 (l) is addressed below in turn.

(i) Refer further cases (where possible and appropriate) to national jurisdictions, and in this regard, strengthen further the capacity of the affected countries

The Tribunal's referral of cases is discussed above. As explained, the Tribunal does not anticipate any further referrals of cases to the region. However, the Tribunal's commitment to building the capacity of the affected countries to prosecute breaches of international humanitarian law remains steadfast and is being intensified as part

[14] General Assembly resolution 40/34 of 29 November 1985.

of the Tribunal's legacy strategy. Further details of these efforts are reported below in the section on the Tribunal's legacy.

(ii) Consider possible ways to review witness protection orders and decisions with a view to withdrawing or varying those that are no longer necessary

In accordance with the authority extended to it by the Security Council, the Plenary of the Tribunal established Rules of Procedure and Evidence designed to facilitate the fair, impartial, transparent and expeditious trials of accused properly brought before it. These Rules contain specific provisions for the granting of protective measures to witnesses. The established protective measures are issued by a Chamber and variance from those measures also requires action by a Chamber.

As part of a comprehensive review of the possibility of lifting confidentiality in records of trials and filings related to cases, we have implemented a plan to cohesively review records of proceedings. Along with reviewing the trial record to determine if confidentiality can be lifted in any portions of the trial proceedings (see item (vii) below), the review will include identifying all protected witnesses and the associated protective measures in relation to them; identifying the need for amendments to the Rules (if any) to vary protective measures where such action may be appropriate; and making recommendations regarding each protected witness as to whether it is feasible and/or advisable to attempt to re-contact the witness to determine whether variance of the previous protective orders is appropriate.

The work of the pilot team responsible for reviewing the first case (*Duško Tadić*) is under way, and the team includes a representative from Chambers, a representative from the Court Management and Support Section and a representative from the Victims and Witnesses Section, who are working in concert to review the record and make recommendations with a view to lifting confidentiality and varying protective measures where appropriate. The pilot team project is being coordinated by the Chief of the Court Management and Support Section and updates are being provided to the Office of the President every 30 days.

(iii) Implement an approved records retention policy in order to identify archives for permanent preservation; identify duplicate records for disposal; identify administrative records eligible for disposal in situ; and identify administrative records with continuing value for transfer to the Archives and Records Management Section

Following the resignation of the Archivist in November 2008, a new archivist was recruited and arrived at the Tribunal on 6 July 2009. The newly appointed archivist is working diligently to establish a system to identify records at the institution. She has been working, in conjunction with the United Nations Archives and Records Management Section and the Joint Tribunals Archival Strategy Working Group, on development of a records retention policy for records throughout the Tribunal and has begun a comprehensive review of the several different retention schedule recommendations within the Tribunal. She is leading a review to ensure that the records retention schedule represents an internally consistent plan that meets the standards of the United Nations Archives and Records Management Section.

(iv) Prepare all digital records for future migration into the record-keeping systems of the institution that is designated to receive them (e.g. the residual mechanism(s))

The Tribunal issued a request for proposals for a project to digitize its audio-visual records in early 2009 and the recommendation for a contractor is currently pending with the Headquarters Committee on Contracts for approval in New York. Contract negotiations are planned for October 2009 and the first audio-visual materials are scheduled to be digitized in November 2009, beginning with public materials. One potential issue that has arisen regarding the implementation of this project is that, in the light of the instruction in item (vii) below, the public records may change if there is a determination that some of the confidential portions of the trial records, and potentially some witness protections can be varied with the approval of a chamber or judge in already completed proceedings. Were there to be a change in the status of confidentiality or witness protections in the trial record, it may result in duplication of work, as it would be necessary to modify the "public" versions of both the transcripts and the audio-visual records to allow maximum transparency and public access to the newly available "public" information. However, as we have already moved so far in the digitization process, we are proceeding as previously scheduled.

(v) Prepare all hard-copy archives and inventories for transfer to the institution that is designated to receive them (e.g. the residual mechanism(s))

Although the "institution that is designated to receive them" has yet to be identified, the archivist, in conjunction with the various organs of the Tribunal, is establishing a method to cohesively identify the hard-copy records that should be included in this type of information transfer. This project is labour-intensive, involving the creation of schedules of hard-copy records that ought to be included in the archives and the identification of those that should not or cannot (judicially privileged materials, attorney work product materials, etc.) be included. Once a schedule of records that ought to be included in the hard-copy archives has been drawn up, the records will be prepared in the most efficient format for eventual transfer to the appropriate institution.

(vi) Develop, in collaboration with the Secretariat, a regime to govern the management of, and access to, the Tribunals' archives, including for the continued protection of confidential information provided by individuals, States and other entities under rule 70 of the Tribunals' Rules of Procedure and Evidence

The Tribunal is working with the Joint Tribunals Archival Strategy Working Group to ensure that such a regime will be implemented. Three representatives of the Tribunal's Archives-Court Management and Support Section team attended the Working Group meeting in Arusha from 28 to 30 September 2009. With respect to the continued protection of information contained in the trial record provided to the Tribunal under the confidentiality provisions of rule 70 of the Tribunal's Rules of Procedure and Evidence, the President has constituted a senior level working group to prepare a strategy, which is being further discussed with the Secretariat.

(vii) Develop and implement an information security strategy that includes the appropriate (de)classification of all records and archives

On 14 September 2009, a proposal was sent to the Office of the President of the Tribunal to implement this recommendation through the formation of a pilot team to begin a review of case records to determine whether they could be declassified and whether witness protection measures could be varied. The Office of the President approved the strategy outlined in the plan in a memorandum dated 16 September 2009 and appointed the Chief of the Court Management and Support Section to implement the plan.

The first pilot team was identified and met on 24 September 2009 and has begun the process of reviewing the record of proceedings in the case of *Duško Tadić*. The pilot team is creating a common document on terms of reference and methodologies, as well as templates on the various types of confidential materials to be reviewed, such as transcripts, exhibits, motions or various types of decisions and orders. Reasons for confidentiality and recommendations as to whether variation of protective measures or lifting of confidentiality is advisable will also be noted. The pilot team will meet regularly, and with the project coordinator (Chief of the Court Management and Support Section), to ensure that progress is being made. A deadline of April 2010 has been set for completion of the review of this first record, which includes pretrial, trial, appeal and review proceedings.

Additional teams will be formed to review the other completed trial records once this initial review is complete, using the established terms of reference, methodologies and template forms. After the review of a trial record is complete, an omnibus order would be drafted for submission to a Judge or a Chamber (depending upon what the rules committee decides and what actions the Plenary adopts to address the issue of lifting confidentiality). Once referred to the Chamber or to the Judge assigned, they will consider whether to authorize contact with a witness for purposes of proposing variance of protective measures, or whether to issue an order lifting confidentiality where possible. Where procedural requirements require the Victims and Witnesses Section to contact witnesses for their consent and views on such variation and to report the results to a Judge or a Chamber, the workload of the Section will increase and likely be significant given the number of witnesses involved.

Furthermore, the lifting of confidentiality will result in significant workload increase after the completion of such an omnibus order, as the transcript coordinators will have to revert to the original transcript to prepare and make available a revised "public" version of the transcript, identifying the new portions of the record that can be disclosed and making the necessary revisions. Once the public transcript has been prepared in compliance with the omnibus order, the audio-visual record will also have to be modified to comply with the new public version of the transcript. As we may already have digitized the public versions of the audio-visual records, this may mean revision of the digitized records. The implementation of this recommendation will, therefore, require a review of the current downsizing schedules in the Court Management and Support Section (transcript coordinators, judicial archives and court records assistants) and in the Victims and Witnesses Section (to implement contacts with witnesses identified to potentially vary protective measures in cases already closed).

With respect to rule 70 materials, those materials will be handled by the rule 70 committee detailed in (vi) above.

(viii) Review all agreements with States and other international bodies, and contracts with private entities, to determine whether there are any that should not continue in force after the closure of the Tribunals

A project to compile all agreements with States and other international bodies signed to date by the Tribunal is under way. Upon completion of this preliminary step, all agreements will be reviewed to determine whether there are any that do not need to remain in force when the residual mechanism starts functioning. In these reviews, consideration will be given to whether there are any agreements that need to be amended to ensure their continuity beyond the closure of the Tribunal.

All security contracts with private entities will be reviewed prior to the closure of the Tribunal with the intention to discontinue such contracts upon closure. Security contracts required to support the residual mechanism will need to be renegotiated to reflect the scope and size of its security requirements. The General Services Section, together with the Procurement Section, has been planning service and supply contracts with private entities for some time in accordance with the downsizing and upcoming closure of the Tribunal. No such contracts are currently planned to extend beyond the expected closure date. Where possible, the Tribunal has taken optional extensions to allow flexibility to continue required services, depending on operational requirements. This includes the building leases. Utilities contracts have similarly been negotiated with optional extensions and built-in flexibility.

(ix) Examine the feasibility of establishing information centres in the affected countries to give access to copies of the public records or the most important parts

On 22 September 2009, the Head of Chambers was appointed to carry out this feasibility study. On 19 October 2009, the Head of Chambers commenced a mission to the region of the former Yugoslavia and her report on that mission is currently being prepared.

IX. Legacy and capacity-building

63. During the reporting period, the Tribunal further increased its focus on issues related to its legacy. The ultimate goal of the Tribunal's legacy strategy is entrenchment of the rule of law in the former Yugoslavia. The Tribunal has identified two major elements of this strategy to be ensuring that jurisdictions in the region of the former Yugoslavia are fully supported in the development of their capacity to prosecute war crimes and guaranteeing that relevant material held by the Tribunal is made readily available to those jurisdictions in a usable form. As part of its commitment to meeting the goals of this strategy, the Tribunal, in partnership with the OSCE Office for Democratic Institutions and Human Rights and the United Nations Interregional Crime and Justice Research Institute, assessed the capacity of the judiciaries of the former Yugoslavia to conduct war crimes cases, identified outstanding needs and assessed previous capacity-building efforts in order to identify best practices. Following a consultative process with stakeholders in the region, the project's final report was released on 23 September. The report examines seven distinct areas that are essential for conducting war crimes proceedings in the

region: knowledge and application of international criminal and humanitarian law in the domestic legal context; investigation and analysis; prosecution; defence; trial and appellate adjudication; outreach; and victim/witness support. The recommendations will assist the activities of local authorities in the former Yugoslavia and international organizations supporting the capacity-building process. The best practices identified in the report are being put to immediate use: for instance, during a recent visit of judges from Bosnia and Herzegovina hosted by the Tribunal, no less than five thematic meetings with Tribunal Judges were organized, respecting the importance of judge-to-judge communication as noted in the report.

64. In parallel, the Tribunal has been working to design capacity-building and technical assistance programmes to meet the identified needs of the local justice systems responsible for dealing with war crimes cases. The Tribunal hopes to secure significant funding from the European Commission to implement this programme together with its partner organizations in order to provide targeted support to the national jurisdictions in specific areas where gaps have been identified. One of the major projects that the Tribunal hopes to undertake is the production of transcripts of its proceedings in Bosnian/Croatian/Serbian, which the representatives of the jurisdictions in the region have identified as having tremendous value to domestic investigations and trials. Transcripts will also greatly enhance the ability of victims, students, historians and others in the region to access the Tribunal's proceedings. As the official languages of the Tribunal are French and English, transcripts are prepared in those languages only, and therefore, until now, there has been no method for investigators or prosecutors within the domestic jurisdictions of the region of the former Yugoslavia to search through the evidence presented by and through witnesses in their native language.

65. The Tribunal recalls that the Security Council, in its resolutions 1503 (2003) and 1534 (2004), called upon the international community to assist national jurisdictions, as part of the Completion Strategy, in improving their capacity to prosecute cases transferred from the Tribunal and the International Criminal Tribunal for Rwanda and encouraged both Tribunals to develop and improve their outreach programmes. Despite the fact that no funds have ever been allocated to this task from the regular budget, the Tribunal has worked tirelessly on its capacity-building mandate, employing a great deal of creativity and making use of partnerships with other organizations. Voluntary contributions have been critical in reaching the capacity-building and outreach objectives and the Tribunal once again wishes to acknowledge the generous financial support of the European Commission in this respect. The Tribunal applauds the European Commission's commitment to the entrenchment of the rule of law in the States of the former Yugoslavia and its recognition of the fundamental importance of ensuring that the Tribunal's knowledge is not lost, but rather transferred to those who need it most.

66. Inspired by broader United Nations efforts to coordinate rule of law activities, the Tribunal will convene a two-day conference in The Hague on 23 and 24 February 2010, to take stock of the Tribunal's legacy. The goals of the conference are to consult stakeholders and generate interest and support for the Tribunal's legacy strategy and activities; share and gather information by taking stock of the steps taken by different actors to build capacity in the region; foster contacts and partnerships between the Tribunal and different players and between other players in the field; provide an opportunity for consultation and creative brainstorming; and promote the coordination and consolidation of efforts.

67. Topics to be discussed at the stock-taking conference include the Tribunal's legacy strategy and legacy projects, capacity-building in the region, national war crimes proceedings, effective long-term access to the Tribunal's records, the importance of its legacy to the victims and the communities of the former Yugoslavia and the way forward. It is anticipated that between 200 and 250 people will participate in the stock-taking conference, with representatives from the Tribunal, the Office of the Legal Counsel of the Office of Legal Affairs of the Secretariat, the Security Council Working Group on the ad hoc Tribunals, the Rule of Law Unit of the Executive Office of the Secretary-General, national jurisdictions in the former Yugoslavia, victim groups, non-governmental organizations and other stakeholders in the former Yugoslavia, international organizations, organs of the European Union, legal counsel of embassies based in The Hague, think tanks and academic research groups. The conference is being funded by voluntary donations.

X. Conclusion

68. This report demonstrates the Tribunal's steadfast commitment to the expeditious conduct of its proceedings in full compliance with due process standards. The delays in estimated completion dates are mainly attributable to factors beyond the Tribunal's immediate control. To the extent possible, the Tribunal has taken measures to minimize the impact of delays and has implemented reforms to ensure the proper management of those delays. The staff retention issue remains critical to the Tribunal's capacity to expedite its operations. Therefore, I again urge the Security Council to formulate and support meaningful retention measures now.

69. Since its inception, the Tribunal's achievements have been numerous and varied. In bringing to trial those accused of war crimes, crimes against humanity and genocide, this institution has issued the clear and unequivocal signal that impunity for such offences is insupportable. By balancing this objective with a keen attentiveness to the rights of the accused, the Tribunal has helped to strengthen the rule of law in the former Yugoslavia and in the wider global community. It is for this reason that I urge the Security Council to adopt all possible measures to secure the immediate apprehension of the two remaining fugitives. In this vein, I also encourage the Council to facilitate the continuation, by judicial institutions in the former Yugoslavia, of the work started by the Tribunal and the Council.

70. In closing, I must reiterate that the continued support of the Council is vital to the Tribunal's efforts to expeditiously complete its mandate at the highest possible standards. It will also prove critical to the proper management of the necessary residual functions by an appropriate body once the Tribunal has closed its doors.

Annex II

Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the Security Council under paragraph 6 of Security Council resolution 1534 (2004)

Introduction

1. This is the twelfth Completion Strategy report submitted by the Prosecutor pursuant to Security Council resolution 1534 (2004) of 26 March 2004.

2. During the past six months, the Office of the Prosecutor has moved closer to completing the 10 remaining cases. The trial in the second of the three large multi-accused leadership cases (seven accused) has been completed and the third has entered the defence case of the fourth of six accused. Three other cases are now in the defence phase, two just beginning and the third nearly completed. One trial, however, remains adjourned for legal reasons. Three trials started and one more will start in December.

3. As trials end, the Trial Division of the Office of the Prosecutor will progressively downsize. Downsizing begins on 1 January 2010. Initial staff reductions reflect the termination of pretrial activities in all cases.

4. Two fugitives, Ratko Mladić and Goran Hadžić, remain at large out of the 161 persons originally indicted. Securing their arrest is one of the highest priorities of the Office.

The completion of trial and appeals proceedings

5. At the end of this reporting period, nine trials will be ongoing: *Prlić et al.*; *Šešelj*; *Đorđević*; *Perišić*; *Gotovina et al.*; *Stanišić and Simatović*; *Stanišić and Župljanin*; and *Karadžić*. The last trial to start is *Tolimir*, which is now in its final pretrial stages and will begin on 17 December 2009. Finally, judgement is awaited in the case of *Popović et al.*

6. The latest trial schedule estimates that in 2011, only the *Karadžić*, *Stanišić and Simatović* and *Stanišić and Župljanin* trials will still be in the evidence stage. All other trials will be finished in 2010.

7. There are five cases on appeal: *Haradinaj et al.*; *Boškoski and Tarčulovski*; *Delić*; *Lukić and Lukić*; and *Šainović et al.* Cases on appeal will double through the next biennium. Appeals work will continue into 2013.

8. The Office of the Prosecutor's trial and appeals teams are working at full capacity to ensure that trials proceed expeditiously to meet the timelines set by the trial and appeal chambers. However, factors beyond the Prosecutor's control could further influence completion of trials and appeals.

Progress in trials during the reporting period

Lukić and Lukić

9. On 20 July 2009, the Prosecution obtained convictions against both accused for crimes against humanity and violations of the laws and customs of war. Milan Lukić was found guilty on 19 counts and sentenced to life imprisonment. Sredoje Lukić was found guilty on seven counts and sentenced to 30 years' imprisonment. Both accused have appealed their convictions and sentences.

Popović et al.

10. This case was the second multi-accused leadership case. The Prosecution presented closing arguments from 2 to 7 September 2009. The trial ended on 15 September 2009, after 424 trial days. Judgement is expected in March 2010.

Gotovina et al.

11. This case is at an advanced stage in the proceedings. Ante Gotovina and Ivan Čermak have completed their defence cases and Mladen Markač is expected to finish by early 2010. Issues regarding Croatia's cooperation with the Office of the Prosecutor concerning this case are addressed later in this report. Judgement has been scheduled for early May 2010.

Đorđević

12. This case started on 27 January 2009. The Prosecution completed the presentation of its evidence on 28 October 2009, having called a total of 104 witnesses. The Defence case will begin on 30 November 2009, with the judgement currently scheduled to be issued in August 2010.

Šešelj

13. This trial is adjourned owing to difficulties in securing the evidence of remaining witnesses. No continuation date has been announced, although it is tentatively scheduled to end in August 2010. In the interim, on 24 July 2009, the accused was convicted of contempt of the Tribunal for having interfered with the administration of justice by disclosing confidential information in violation of orders granting protective measures to witnesses. He was sentenced to 15 months' imprisonment. He has appealed his conviction.

Perišić

14. The prosecution evidence closed in early November 2009, a few days later than originally estimated. The Defence case will begin in January 2010. Judgement is scheduled for the end of October 2010.

Prlić et al.

15. The fourth of the six Bosnian-Croat leaders on trial is now presenting his defence. The presentation of evidence is expected to continue until mid-2010, with judgement scheduled for February 2011.

Stanišić and Župljanin

16. This trial began on 14 September 2009. The prosecution has been allocated 212 hours to present its evidence. The prosecution case should be concluded by the Easter recess in 2010. Judgement is scheduled for April 2011.

Stanišić and Simatović

17. Jovica Stanišić's health has improved so the trial can be resumed. Arrangements have been put in place to accommodate his medical condition. However, the sudden death of lead counsel for Franko Simatović caused a further adjournment, to give his new defence team adequate time to prepare. The case will recommence during the week of 30 November 2009 and proceed on a sitting schedule of two days per week. Judgement is scheduled for July 2011.

Karadžić

18. On 20 August 2009, the pretrial Judge declared the case ready for trial. Radovan Karadžić appealed and argued that he needed substantially more preparation time. His appeal was dismissed on 13 October 2009. The Tribunal also dismissed his claim that he enjoyed immunity from prosecution. The Prosecution has been allocated 300 hours to present its evidence. On 27 October and 2 November 2009, the Prosecution presented its opening statement. The Prosecution was prepared to present the evidence and call its first witnesses who had been in attendance. However, since Radovan Karadžić refused to attend the opening, the trial was adjourned.

19. On 5 November 2009, the Trial Chamber ordered counsel to be assigned. The trial was adjourned to 1 March 2010 to accommodate the assigned counsel's preparations to represent the accused when trial resumes, should that be required. Assigned counsel will represent the accused if the accused absents himself from the trial or engages in any other obstructive conduct. The accused is now seeking to appeal the assignment of counsel. The Office of the Prosecutor stands ready to continue the proceedings and start the presentation of evidence. Taking into account the need for a fair and expeditious trial, it is imperative that proper arrangements are in place to allow the trial to proceed in an uninterrupted fashion. The assignment of counsel by the Trial Chamber is therefore an important step in the avoidance of further delays. Judgement is currently scheduled for September 2012.

Tolimir

20. Pretrial steps are close to completion. The Prosecution pretrial brief was filed on 29 September 2009 and the trial is expected to begin on 17 December 2009. When this trial starts, all indictees currently in the custody of the International Tribunal will be on trial. Judgement in this case is scheduled for March 2011.

The two fugitives

21. Two fugitives, Ratko Mladić and Goran Hadžić, remain at large. It was hoped that Ratko Mladić would have been arrested so that his case could have been presented in a single trial with Radovan Karadžić. On 15 October 2009, as Ratko Mladić was not in the custody of the Tribunal, the Trial Chamber severed the two

cases to allow the trial of Radovan Karadžić to proceed alone. The Prosecution will soon present an updated indictment against Ratko Mladić.

22. If Ratko Mladić is arrested soon, it may be possible to try him with Karadžić, whose trial has been adjourned until 1 March 2010.

Progress in appeals during the reporting period

23. During the reporting period, the Appeals Chamber rendered judgement in the case of *Dragomir Milošević*. The Appeals Chamber heard oral submissions in the cases of *Dragomir Milošević*, *Haradinaj et al.* and *Boškoski and Tarčulovski* and decisions are expected in early 2010. Appeals filings are complete in the *Delić* case. The Appeals Chamber will hear oral submissions from the parties in January 2010.

24. The Office of the Prosecutor's appeals work during the reporting period included filing Prosecution appeals and consolidated appeal and reply briefs in the first multiple accused trial judgement in *Šainović et al.* The Prosecution is currently preparing response briefs to each of the five individual appeals. The deadline for these filings is January 2010.

25. In *Lukić and Lukić*, the Prosecution has filed an appeal against *Sredoje Lukić* and his appeal brief. Both accused have appealed their convictions and sentences. The written briefings in these appeals will be concluded before the end of February 2010.

26. Over the next six months, the Appeals Division will remain very busy, as judgements are expected in several cases: the second multi-accused leadership case — *Popović et al.* — which involves seven accused, and the cases of *Gotovina et al.* and *Đorđević*. All judgements will require review for legal and factual errors and may result in a Prosecution appeal. Each accused who is convicted, is expected to appeal. During this period, the Appeals Division will carry a continuing inventory of at least 20 appeals.

International cooperation

27. The Office of the Prosecutor continues to seek the full cooperation of the States of the former Yugoslavia and other States to fulfil its mandate, as required under article 29 of the Statute of the Tribunal, and to meet Completion Strategy goals. Failure of States to satisfactorily comply with requests of the Prosecution in a timely manner could affect the Prosecutor's ability to adequately present evidence and possibly result in an extension in time of court proceedings.

Cooperation from the States of the former Yugoslavia

28. Cooperation from the States of the former Yugoslavia remains vital, particularly in the areas of: (a) access to archives, documents and witnesses; (b) the protection of witnesses; and (c) efforts to locate, arrest and transfer the two remaining fugitives (including taking measures against those who support them).

29. To assess cooperation, the Prosecutor met with political and judicial authorities in Serbia, Croatia and Bosnia and Herzegovina and his officials maintained a dialogue with key officials at the State and working levels, including national prosecution offices.

Cooperation of Serbia

30. Serbia's improved cooperation with the Office of the Prosecutor, as reported six months ago, has, during this reporting period, continued and further developed.

31. Serbia's National Council for Cooperation with the Tribunal successfully improved its coordination with various Government bodies in order to address requests for assistance from the Office of the Prosecutor related to access to archives and documents. Their coordination has resulted in more expeditious and efficient handling of requests and in an improved ability to provide timely responses to urgent requests arising during trial. No requests are outstanding.

32. During the reporting period, the National Council coordinated the execution of requests from the Office of the Prosecutor for the conduct of specific investigative activities, including search and seizure operations carried out by relevant State and judicial authorities at the request of the Office of the Prosecutor. As a result, important evidence required in ongoing cases was obtained.

33. The Serbian authorities have also responded adequately and expeditiously to facilitate the appearance of witnesses before the Tribunal, including serving summonses on individuals. In specific cases, the Office of the Serbian War Crimes Prosecutor and Serbian law enforcement bodies promptly took the necessary measures in response to requests of the Office of the Prosecutor to secure the safety of threatened witnesses.

34. The Office of the Prosecutor encourages Serbian authorities to continue responding effectively to its requests for assistance. Assistance by Serbia will remain crucial to the Tribunal's successful completion of the remaining trials and appeals.

35. The most critical outstanding issue of Serbia's assistance is the apprehension of the fugitives, Ratko Mladić and Goran Hadžić.

36. During the reporting period, the Office of the Prosecutor was regularly and comprehensively apprised of the work undertaken by the Serbian agencies charged with locating and arresting the fugitives. The National Security Council of Serbia plays an important lead role by closely supervising and guiding the work of the investigating agencies.

37. Since the previous report to the United Nations Security Council, Serbian agencies continued to actively conduct search operations aimed at the fugitives and their support networks. The National Security Council of Serbia and its Government's Action Team in charge of tracking fugitives have increased the effectiveness of ongoing operations and improved coordination between Government bodies, law enforcement agencies and security services. New avenues are being opened, explored and actively pursued. It is hoped that this improved framework and the ongoing operational activities will result in the apprehension of the fugitives in the near future.

38. The Office of the Prosecutor is satisfied with the current level of cooperation efforts being made by the authorities of Serbia. However, the Office of the Prosecutor insists that Serbia maintain these efforts in order to achieve additional positive results.

Cooperation of Croatia

39. During the reporting period, Croatia continued to adequately respond to the majority of regular requests for assistance associated with trial work. A number of those requests are still pending.

40. Since the previous report to the Security Council, however, no substantial progress has been made in locating a number of key military documents related to Operation Storm of 1995, which the Office of the Prosecutor had first requested in 2007. In June of this year, at the request of the Government of Croatia, the Office of the Prosecutor made several concrete suggestions addressing deficiencies in the investigation, for Croatia's consideration. For more than three months, the Office of the Prosecutor was not informed of any activities undertaken in relation to Croatia's administrative investigation. After raising this concern in September 2009 with the Governmental Council for Cooperation of Croatia, chaired by the Prime Minister, a new inter-agency task force was created to look into the matter. This initiative by the Prime Minister was welcomed by the Office of the Prosecutor.

41. On 10 November 2009, the Office of the Prosecutor received the report of the Task Force. The initial assessment of the Office of the Prosecutor is that although efforts have been undertaken to advance the investigation and improve the investigative approach, the results remain limited. It appears that none of the missing artillery documents have been located and few additional investigative avenues of inquiry have been pursued. The report indicates that the investigation will continue.

42. These key military documents relate to a trial that is nearing completion. The Prosecutor once again urges Croatia to intensify its efforts and to conduct a comprehensive investigation to locate and provide these key documents to the Tribunal before the end of trial.

Cooperation of Bosnia and Herzegovina

43. The authorities of Bosnia and Herzegovina responded adequately to a majority of requests for assistance with documents and access to Government archives. The authorities also continue to assist by facilitating the appearance of witnesses before the Tribunal.

44. The Office of the Prosecutor encourages law enforcement and judicial authorities in Bosnia and Herzegovina to take necessary measures against those helping the remaining fugitives evade justice or otherwise obstructing the effective implementation of the Tribunal's mandate.

45. The fact that Radovan Stanković, who was indicted by the Tribunal for crimes against humanity and war crimes, including rape, remains at large is a matter of serious concern. He was transferred by the Tribunal to Bosnia and Herzegovina in May 2005 pursuant to rule 11 *bis*, but escaped from prison two years ago while serving his 20-year sentence in Foča. The Special Department for War Crimes has initiated proceedings against persons who assisted the fugitive in his escape. The Office of the Prosecutor encourages authorities to take the appropriate action to arrest Stanković.

46. The Office of the Prosecutor supports the ongoing prosecution of war crimes cases in Bosnia and Herzegovina and, in particular, the work of the State Prosecutor

and the Special Department for War Crimes. Their offices prosecute 11 *bis* cases and investigative material transferred by the Office of the Prosecutor. Of concern is the possible departure of international personnel and support staff, as their mandates and contracts end mid-December and have not yet been extended. The loss of international personnel, who account for approximately one third of staff members currently working in the Special Department for War Crimes, will significantly impact war crimes prosecutions and could result in serious delays in investigations, trials and appeals. The Office of the Prosecutor encourages the responsible authorities to extend the mandates of the international personnel involved in war crimes cases.

47. Cooperation does not take place in a vacuum. When senior political figures and Governments publicly praise and support war criminals and deny crimes, acts and statements of cooperation ring hollow. More significantly, the real risk arises that witnesses will be discouraged from participating in war crimes proceedings.

Cooperation between States of the former Yugoslavia in judicial matters

48. Cooperation in judicial matters among the States of the former Yugoslavia is critical to the fulfilment of the International Tribunal's mandate. Cooperation is necessary to successfully prosecute cases using investigative material transferred by the Office of the Prosecutor to State prosecutors. However, legal obstacles to cooperation continue to exist. Each State bars extradition based on nationality and has other legal barriers preventing the transfer of war crimes cases from one State to another. Prosecutors from different States are initiating parallel war crimes investigations for the same crimes. This situation threatens the successful investigation and prosecution of war crimes cases and exacerbates the problem of impunity. All States in the region must urgently address these important issues. In the meantime, State prosecutors are encouraged to maintain an open dialogue and to find ways to cooperate in the most efficient and professional manner possible.

Cooperation from other States and organizations

49. The Office of the Prosecutor also relies on other States and international organizations to provide documents, information and witnesses for trials and appeals. Of importance also is the international community's essential assistance in providing witness protection and, when necessary, in supporting witness relocation.

50. The Office of the Prosecutor appreciates the support of States and of international and regional organizations such as the European Union, OSCE, the Council of Europe and non-governmental organizations, including those active in the former Yugoslavia. This support will remain crucial until the Tribunal completes its work.

The transition to domestic prosecution

51. One key component of the Tribunal's Completion Strategy is the transfer, by the Office of the Prosecutor, of investigative material and case files to competent national jurisdictions. The Office of the Prosecutor supports national prosecution efforts by facilitating access to investigative material and evidence available in The Hague.

52. The Office of the Prosecutor maintains positive working relationships with its regional counterparts, the officers of the State Prosecutor in Bosnia and Herzegovina and Croatia, and the Office of the War Crimes Prosecutor in Serbia. These relationships are being strengthened through the "Joint European Commission and International Tribunal for the Former Yugoslavia Training Project for National Prosecutors and Young Professionals from the former Yugoslavia", which has allowed liaison prosecutors from the region to work closely with the Office of the Prosecutor's transition team in The Hague.

Rule 11 *bis* cases

53. As reported previously, the rule 11 *bis* transfer procedures have been fully applied and no further cases appear suitable for transfer.

54. Of the six cases transferred to Bosnia and Herzegovina, five have now concluded with final decisions. On 20 July 2009, the Appellate Panel of the State Court of Bosnia and Herzegovina rendered the final decision in the *Mejakić et al.* case and confirmed sentences of 21 years for Željko Mejakić and 31 years for Duško Knežević. Momčilo Gruban's sentence was reduced from 11 years to seven years. On 16 October 2009, the State Court convicted Milorad Trbić of genocide and sentenced him to 30 years' imprisonment. The *Ademi and Norac* case transferred to Croatia is still pending on appeal. The *Kovačević* case transferred to Serbia remains suspended due to the ill health of the accused. It remains unclear when (or if) the accused will be fit to stand trial. The Office of the Prosecutor has requested that the Serbian authorities monitor his health situation and provide regular reports.

55. OSCE continues to monitor proceedings in transferred rule 11 *bis* cases on behalf of the Office of the Prosecutor. Two cases remain open, *Trbić* and *Ademi and Norac*. OSCE provides regular reports on these proceedings to the Office of the Prosecutor. The Prosecutor uses these reports as the basis for the quarterly progress reports submitted to the Referral Bench of the Tribunal.

Transfer of investigative material to national authorities

56. The Office of the Prosecutor continues to review and compile investigative material for transfer to the Office of the State Prosecutor of Bosnia and Herzegovina. After the local authorities have reviewed and assessed the transferred material, the Office of the Prosecutor provides extensive follow-up assistance. Over the past six months, the Office of the Prosecutor has prepared investigative material on 11 suspects involving four municipalities in Bosnia and Herzegovina. The material on two municipalities (three suspects) has been transferred. The material on the remaining two municipalities (eight suspects) will be transferred before the end of 2009.

57. Separately, the Office of the Prosecutor has identified additional investigative material relating primarily to crimes not prosecuted before the Tribunal for a variety of reasons.

Requests for assistance from national judicial authorities

58. During the reporting period, the Office of the Prosecutor responded to 101 requests for assistance (an average of at least four new requests per week) from national judicial authorities.

59. National judicial authorities from the former Yugoslavia submitted 48 requests. The majority came from Bosnia and Herzegovina (31), with 10 from Croatia and seven from Serbia. A number of these requests were closely linked to cases tried before the Tribunal. Liaison prosecutors from the region working in the Office of the Prosecutor have played a key role in processing those requests.

60. Prosecutors' offices and law enforcement agencies in other States investigating war crimes in the former Yugoslavia submitted 53 requests, an increase compared with the previous reporting period.

61. Finally, delegations from national prosecutors' offices and law enforcement agencies continue to visit the Office of the Prosecutor in search of material to support national war crimes investigations and prosecutions.

Capacity-building efforts

62. Successful domestic prosecution of serious violations of international humanitarian law requires States to have a functioning criminal justice system with the capacity to deal with these cases. The Office of the Prosecutor, on occasion in association with Chambers and the Registry, assists its national counterparts with these specialized and complex prosecutions. The focus of the Office of the Prosecutor is to maintain an effective partnership with prosecutors and courts in the region and to participate in concrete support projects.

63. With the assistance of the European Commission, the Office of the Prosecutor established a 12-month European Union/Tribunal cooperation project to support national prosecution services. At the end of June 2009, three prosecutors from the region (one from the State Prosecutor's Office in Bosnia and Herzegovina, one from the State Attorney's Office in Croatia and one from the War Crimes Prosecutor's Office in Serbia) began working as liaison prosecutors within the Office of the Prosecutor. For the purposes of furthering national war crimes investigations, the three liaison prosecutors receive training and obtain access to documents and information collected by the Office of the Prosecutor. They work side by side with staff members in the Office of the Prosecutor, which gives them an opportunity to consult with in-house experts and other personnel on related cases.

64. Aside from the liaison prosecutors working under the European Union/Tribunal project, young legal professionals from the former Yugoslavia are given an opportunity to assist the Office of the Prosecutor's trial teams with extensive pretrial and trial work.

65. The Office of the Prosecutor participates in meetings with other international prosecution offices, as well as with the European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes. The main purpose of these meetings is to share information, expertise and best practices.

66. In addition, the Office of the Prosecutor recently contributed to the report entitled "Supporting the transition process: lessons learned and best practices in knowledge transfer", prepared by the Office for Democratic Institutions and Human Rights of OSCE, in conjunction with the Tribunal and the United Nations Interregional Crime and Justice Research Institute. The report identifies the outstanding needs of judiciaries in the former Yugoslavia and evaluates the effectiveness of the capacity-building efforts to date. It also sets out a number of

recommendations assisting the national authorities of the former Yugoslavia and international organizations supporting capacity-building in the region.

Management of resources

Downsizing

67. The Office of the Prosecutor is planning to downsize the Trial Division. Throughout the downsizing process, its aims will be threefold: to successfully complete the trials; make the required budget cuts; and treat staff fairly and objectively in the process. In its budget submission for 2010-2011, the Office of the Prosecutor proposes a series of cuts in staff numbers as trials are completed. The budget submission calls for nearly a 40 per cent reduction in Office posts as trials end over the course of next year and 60 per cent of posts over the next two years.

68. The primary operational need of the Office of the Prosecutor is to maintain the integrity of the prosecution trial teams, given that trial team members working on a lengthy and complex prosecution become very specialized and knowledgeable about the facts and legal issues of their case. Team members are not interchangeable, particularly in the late stages of a trial.

69. Departures of key prosecution staff from trial teams can be extremely problematic, if not damaging, to the successful completion of a trial. Thus, retention of trial team staff until the end of trial is a major concern for the Office of the Prosecutor. Exacerbating this concern is the fact that in the final months of a trial, recruiting new staff externally will not replace the knowledge and experience of departing staff members. To date, the departure rate of staff members from the Office of the Prosecutor has been steadily increasing. Given the uncertain circumstances that prevail, the Office is providing staff with as much information as possible and is working with the Registrar to seek extensions of the contracts of individual staff based on projected trial schedules, in the hope of securing a commitment to see trials through to conclusion.

70. In contrast to the downsizing of the Trial Division, the Appeals Division will be expanded to handle the anticipated rise in the number of appeals generated as trials end.

Legacy issues

71. As the Tribunal completes its core trial and appeals work, the Office of the Prosecutor will continue to contribute to discussions on the creation of a residual mechanism. In this regard, the Office of the Prosecutor welcomes the work carried out by the Security Council Informal Working Group on International Tribunals and the Office of Legal Affairs of the Secretariat, which contributed to the comprehensive report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals.

72. The Office of the Prosecutor is concerned that its evidence archives, which contain a substantial volume of confidential material (including information on protected witnesses, rule 70 material and other sensitive documents received from Governments and organizations) are publicly accessible with appropriate restrictions

to protect confidentiality, security and privacy rights. In the months ahead, the Office of the Prosecutor will develop options to address these concerns.

73. One important legacy of the Office of the Prosecutor will be the improved capacity of domestic institutions throughout the former Yugoslavia. In this respect, its current close relationships with prosecutors in the region, its active engagement in the European Union/Tribunal project and the various information-sharing mechanisms in place are the foundations for ongoing capacity-building efforts.

74. The Office of the Prosecutor's contributions to various publications, such as the *ICTY Manual on Developed Practices* are also part of the wider project of preserving the Tribunal's legacy.

Conclusion

75. The Office of the Prosecutor remains fully committed to the Tribunal's Completion Strategy goals. Over the past six months, considerable progress has been made in trials and appeals work. However, to successfully complete its work, the cooperation of States remains critical. The apprehension of the two remaining fugitives, Goran Hadžić and Ratko Mladić, remains the highest priority of the Office of the Prosecutor. They must face justice regardless of when they are arrested.

76. While the Office of the Prosecutor is completing the process of transferring its investigative material, it will further develop its effective partnerships with national prosecutors and continue to provide assistance to national war crimes prosecutions. The steadfast and continued support of the international community for domestic war crimes prosecutions remains of paramount importance.

77. As trial and appeals work progresses in the next year, the Office of the Prosecutor will undergo a significant downsizing process. This is a challenging task. Moreover, to cope with the complexity of remaining current and upcoming trials and appeals, the Office of the Prosecutor will need to retain qualified staff members working on these cases.

78. At this stage of the Tribunal's existence, the continuing support of the Security Council and the Member States of the United Nations remains essential for the Office of the Prosecutor to fulfil its Completion Strategy goals.

Enclosure I

1. Persons convicted or acquitted after trial between 15 May and 15 November 2009 (2)			
Name	**Former title**	**Initial appearance**	**Judgement**
Sredoje Lukić	Member, Serb paramilitary unit, Bosnia and Herzegovina	20 September 2005	20 July 2009; sentenced to 30 years of imprisonment
Milan Lukić	Member, Serb paramilitary unit, Bosnia and Herzegovina	24 February 2006	20 July 2009; sentenced to life imprisonment

2. Persons pleading guilty between 15 May and 15 November 2009 (0)			
Name	**Former title**	**Initial appearance**	**Judgement**
No guilty pleas			

3. Persons convicted of contempt between 15 May and 15 November 2009 (2)			
Name	**Former title**	**Initial appearance**	**Judgement**
Vojislav Šešelj	President, Serbian Radical Party	6 March 2009	24 July 2009; sentenced to 15 months of imprisonment
Florence Hartmann	Spokesperson for the Prosecutor of the International Tribunal for the Former Yugoslavia	27 October 2008	14 September 2009; sentenced to a fine of €7,000

Enclosure II

Trials in progress between 15 May and 15 November 2009 (24 accused in 9 cases)				
Case	**Name**	**Former title**	**Initial appearance**	**Start of trial**
1.	Jadranko Prlić	President, Croatian Republic of Herceg-Bosna	6-Apr-04	"Herceg-Bosna" trial commenced on 26 April 2006
	Bruno Stojić	Head, Department of Defence, Croatian Republic of Herceg-Bosna		
	Slobodan Praljak	Assistant Minister of Defence, Croatian Republic of Herceg-Bosna		
	Milivoj Petković	Commander, Croatian Defence Council		
	Valentin Ćorić	Chief of Military Police Administration, Croatian Defence Council		
	Berislav Pušić	Military Police Commanding Officer, Croatian Defence Council		
2.	Ljubiša Beara	Colonel, Chief of Security, Bosnian Serb Army	12-Oct-04	"Srebrenica" trial commenced on 14 July 2006
	Drago Nikolić	Chief of Security, Drina Corps, Bosnian Serb Army	23-Mar-05	
	Ljubomir Borovčanin	Deputy Commander, Ministry of Interior Special Police Brigade, Republika Srpska	7-Apr-05	
	Vujadin Popović	Lt. Colonel, Assist. Commander, Drina Corps, Bosnian Serb Army	18-Apr-05	
	Vinko Pandurević	Commander, Zvornik Brigade, Bosnian Serb Army	31-Mar-05	
	Milan Gvero	Assistant Commander, Bosnian Serb Army	2-Mar-05	
	Radivoje Miletić	Chief of Operations, Deputy Chief of Staff, Bosnian Serb Army	2-Mar-05	
3.	Vojislav Šešelj	President, Serbian Radical Party	26-Feb-03	Trial commenced on 7 November 2007
4.	Ante Gotovina	Commander, Split Military District, Croatian Army	12-Dec-05	Trial commenced on 11 March 2008
	Ivan Čermak	Assistant Minister of Defence, Commander of Military Police, Croatia	12-Mar-04	
	Mladen Markač	Special Police Commander, Croatia	12-Mar-04	
5.	Momčilo Perišić	Chief of General Staff, National Yugoslav Army	9-Mar-05	Trial commenced on 2 October 2008
6.	Vlastimir Đorđevic	Assistant Minister of the Serbian Ministry of Internal Affairs (MUP), Chief of the Public Security Department of the MUP	19-Jun-07	Trial commenced on 27 January 2009

7.	Mićo Stanišić	Minister, Internal Affairs, Republika Srpska	17-Mar-05	Trial commenced on 14 September 2009
	Stojan Župljanin	Head or Commander of the Serb-operated Regional Security Services Centre	21-Jun-08	
8.	Franko Simatović	Commander, Special Operations Unit, State Security Services, Republic of Serbia	2-Jun-03	Trial commenced on 9 June 2009
	Jovica Stanišić	Head, State Security Services, Republic of Serbia	12-Jun-03	
9.	Radovan Karadžić	President, Republika Srpska	31-Jul-08	Trial commenced on 21 October 2009

Enclosure III

1. Arrivals between 15 May and 15 November 2009 (0)			
Name	**Former title**	**Place of crime**	**Arrival date**
No new arrivals			

2. Remaining fugitives between 15 May and 15 November 2009 (2)			
Name	**Former title**	**Place of crime**	**Date of indictment**
Ratko Mladić	Commander, Main Staff, Bosnian Serb Army	Bosnia and Herzegovina	25 July 1995
Goran Hadžić	President, Serbian Autonomous District, Slavonia Baranja and Western Srem	Croatia	28 May 2004

Enclosure IV

Accused awaiting trial between 15 May and 15 November 2009 (1)			
Name	**Former title**	**Initial appearance**	**Proposed start date for trial**
Zdravko Tolimir	Assistant Commander for Intelligence and Security of the Bosnian Serb Army	4 June 2007	17 December 2009

Enclosure V

Appeals completed from 16 May 2009 [1]

(with date of filing and decision) updated to 3 November

Interlocutory

International Tribunal for the Former Yugoslavia	
1. Karadzic IT-95-5/18-AR73.3	29/04/09-04/06/09
2. Prlic et al IT-04-74-AR65.14	11/03/09-05/06/09
3. Popovic et al IT-05-88-AR73.4-**conf**	12/05/09-09/06/09
4. Karadzic IT-95-5/18-AR72.1	12/05/09-25/06/09
5. Karadzic IT-95-5/18-AR72.2	12/05/09-25/06/09
6. Karadzic IT-95-5/18-AR72.3	12/05/09-25/06/09
7. Karadzic IT-95-5/18-AR72.4	13/05/09-25/06/09
8. Prlic et al IT-04-74-AR65.15	20/05/09-08/07/09
9. Karadzic IT-95-5/18-AR72.5	13/05/09-09/07/09
10. Popovic IT-05-88-AR65.8	17/06/09-20/07/09
11. Prlic et al IT-04-74-AR65.16	19/06/09-20/07/09
12. Prlic et al IT-04-74-AR65.17	30/06/09-03/08/09
13. Gotovina et al IT-06-90-AR65.3-**conf**	20/07/09-06/08/09
14. Popovic et al IT-05-88-AR65.9	29/07/09-02/10/09
15. Prlic et al IT-04-74-AR65.18	17/09/09-02/10/09
16. Karadzic IT-95-5/18-AR73.4	24/07/09-12/10/09
17. Karadzic IT-95-5/18-AR73.5	25/09/09-13/10/09
18. Prlic et al IT-04-74-AR73.16	23/07/09-03/11/09
International Criminal Tribunal for Rwanda	
1. Karemera et al ICTR-98-44-AR73.17	04/03/09-29/05/09
2. Karemera et al ICTR-98-44-AR73.16	02/03/09-19/06/09
3. Nshogoza ICTR-07-91-A	25/03/09-26/06/09
4. Karemera et al ICTR-98-44-AR73.17	25/09/09-22/10/09

From judgement

International Tribunal for the Former Yugoslavia	
1. D. Milosevic IT-98-29/1-A	31/12/07- to be rendered on 12/11/09

Other

International Tribunal for the Former Yugoslavia	
1. Karadzic IT-95-5/18-AR15	05/08/09-26/06/09
International Criminal Tribunal for Rwanda	
1. Muvunyi ICTR-00-55A-AR	14/04/09-20/05/09
2. Musema ICTR-96-3-R	01/05/09-18/06/09
3. Ndindabahizi ICTR-01-71-R	05/03/09-18/06/09
4. Rutaganda ICTR-96-3-R	07/04/09-10/07/09
5. Niyitegeka ICTR-96-14-R	11/05/09-01/07/09
6. Kamuhanda ICTR-99-54A-R	15/05/09-21/07/09
7. Niyitegeka ICTR-96-14-R	11/12//08-07/09/09

Referral

Review

International Criminal Tribunal for Rwanda	
1. Barayagwiza ICTR-99-52A-R	25/11/08-17/06/09

Contempt

International Tribunal for the Former Yugoslavia	
1. Jokic IT-05-88-R77.1-A-**conf**	14/04/09-25/06/09
2. Haraqija & Morina IT-04-84-R77.4-A	02/01/09-23/07/09

[1] **Total number of appeals completed from 16 May 2009 = 34**

Interlocutory appeals = 22 Contempt = 2 Referral = 0
Appeals from judgement = 1 Review = 1 Other = 8

Enclosure VI

Appeals pending as of 3 November 2009 [1]
(with date of filing)

Interlocutory

International Tribunal for the Former Yugoslavia

1. Ex parte and conf	28/07/09
2. Popovic et al IT-05-88-AR65.10-**conf**	19/10/09

International Criminal Tribunal for Rwanda

1. Ngirumpatse ICTR-98-44-AR65	25/09/09
2. Muvunyi ICTR-2000-55A	07/09/09
3. Karemera et al ICTR-98-44-AR91.2	23/09/09
4. Bizimungu et al ICTR-99-50-A	30/09/09

From judgement

International Tribunal for the Former Yugoslavia

1. Haradinaj et al, IT-04-84-A	01/05/08
2. Boskoski/Tarculovski IT-04-82-A	22/07/08
3. Delic IT-04-83-A	14/10/08
4. Sainovic et al IT-05-87-A	27/05/09
5. Lukic and Lukic IT-98-32/1-A	21/07/09

International Criminal Tribunal for Rwanda

1. Nchamihigo ICTR-2001-63-A	20/10/08
2. Bikindi ICTR-01-72-A	29/12/08
3. Zigiranyirazo ICTR-01-73-A	29/12/08
4. Bagosora et al - ICTR-98-41A	29/12/08
5. Rukundo ICTR-01-70-A	11/03/09
6. Kalimanzira ICTR-05-88-A	09/07/09
7. Renzaho ICTR-97-31-A	02/09/09

Other

International Criminal Tribunal for Rwanda

1. Kajelijeli ICTR-98-44A-R	26/06/09

Referral

Review

International Criminal Tribunal for Rwanda

1. Niyitegeka ICTR-98-44A-R	28/10/09

Contempt

International Tribunal for the Former Yugoslavia

1. Ex parte and conf	11/08/09
2. Seselj IT-03-67-R77.2-A-**conf**	25/08/09
3. Ex parte and conf	07/09/09
4. Hartmann IT-02-54-R77.5-A	24/09/09

International Criminal Tribunal for Rwanda

1. Nshogoza ICTR-07-91-AR	22/07/09

[1] **Total number of appeals pending = 25**

Interlocutory appeals = 6 Contempt = 5 Referral = 0
Appeals from judgement = 12 Review = 1 Other = 1

Enclosure VII

Motions disposed of from 16 May 2009
(with date of disposition)

International Criminal Tribunal for Rwanda

1. 22/05 *Niyitegeka*
2. 22/05 *Kamuhanda*
3. 25/05 *Bagosora et al.*
4. 09/06 *Nchamihigo*
5. 23/06 *Bagosora et al.*
6. 30/06 *Bikindi*
7. 30/06 *Bikindi*
8. 01/07 *Kajelijeli*
9. 03/07 *Bagosora et al.*
10. 03/07 *Zigiranyirazo*
11. 08/07 *Nchamihigo*
12. 10/07 *Kalimanzira*
13. 20/07 *Bikindi*
14. 20/07 *Kalimanzira*
15. 20/07 *Kalimanzira*
16. 20/07 *Zigiranyirazo*
17. 22/07 *Nchamihigo*
18. 31/07 *Nshogoza*
19. 19/08 *Niyitegeka*
20. 19/08 *Nshogoza*
21. 27/08 *Zigiranyirazo*
22. 27/08 *Bagosora et al.*
23. 27/08 *Kajeliljeli*
24. 02/09 *Nchamihigo*
25. 14/09 *Muvunyi*
26. 14/09 *Renzaho*
27. 16/09 *Bagosora et al.*
28. 16/09 *Bikindi*
29. 16/09 *Zigiranyirazo*
30. 16/09 *Zigiranyirazo*
31. 17/09 *Ngirumpatse*
32. 17/09 *Ngirumpatse*
33. 18/09 *Zigiranyirazo*
34. 18/09 *Bagosora et al.*
35. 18/09 *Bagosora et al.*
36. 22/09 *Renzaho*
37. 22/09 *Renzaho*
38. 24/09 *Zigiranyirazo*
39. 28/09 *Bagosora et al.*
40. 28/09 *Nchamihigo*
41. 28/09 *Nchamihigo*
42. 29/09 *Karemera et al.*
43. 02/10 *Karemera et al*
44. 02/10 *Karemera et al*
45. 02/10 *Bizimungu et al.*
46. 07/10 *Bizimungu et al.*
47. 14/10 *Renzaho*
48. 16/10 *Karemera et al*
49. 20/10 *Rukundo*
50. 21/10 *Renzaho*
51. 26/10 *Kalimanzira*
52. 26/10 *Zigiranyirazo*
53. 27/10 *Bikindi*

International Tribunal for the Former Yugoslavia

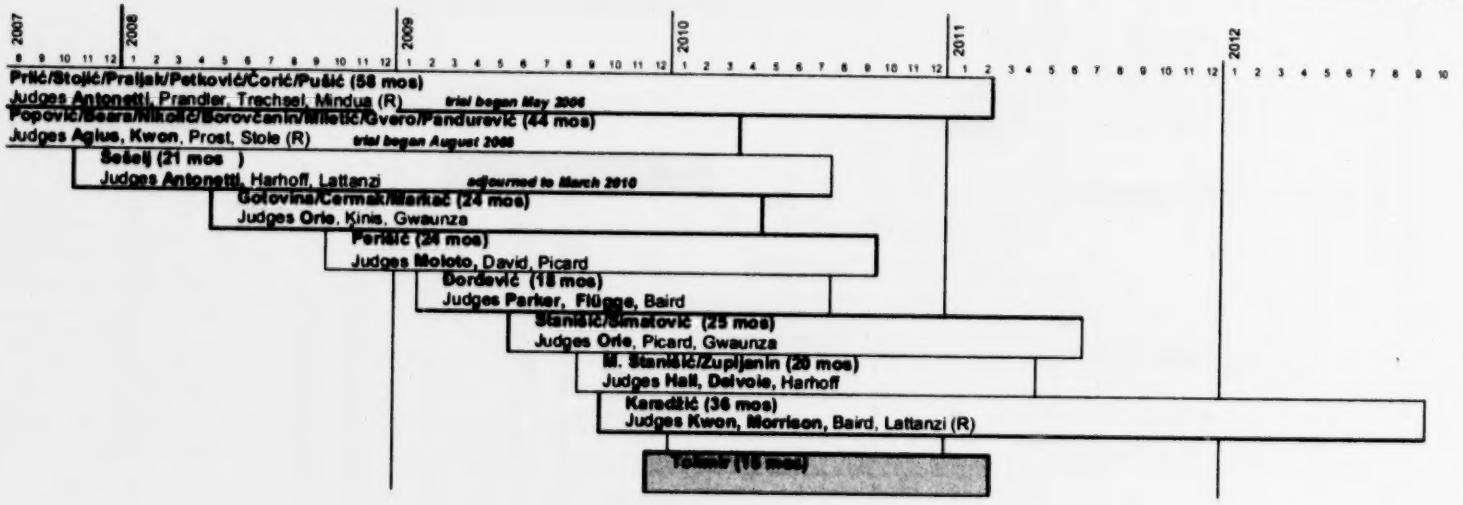
1. 19/05 *Delic*
2. 19/05 *Boskoski & Tarculovski*
3. 19/05 *Boskoski & Tarculovski*
4. 19/05 *D. Milosevic*
5. 21/05 *Milutinovic et al.*
6. 25/05 *Haradinaj et al.*
7. 18/06 *D. Milosevic*
8. 22/06 *D. Milosevic*
9. 24/06 *Boskoski & Tarculovski*
10. 24/06 *Sainovic et al.*
11. 29/06 *Sainovic et al.*
12. 01/07 *D. Milosevic*
13. 06/07 *D. Milosevic*
14. 14/07 *Sainovic et al.*
15. 22/07 *Boskoski & Tarculovski*
16. 24/07 *D. Milosevic*
17. 24/07 *D. Milosevic*
18. 24/07 *D. Milosevic*
19. 24/07 *Karadzic*
20. 27/07 *Sainovic et al.*
21. 04/08 *Sainovic et al.*
22. 07/08 *Sainovic et al.*
23. 19/08 *Lukic & Lukic*
24. 25/08 *Haradinaj et al.*
25. 28/08 *Lukic & Lukic*
26. 02/09 *Sainovic et al.*
27. 02/09 *Haradinaj et al.*
28. 02/09 *Boskoski & Tarculovski*
29. 08/09 *D. Milosevic*
30. 08/09 *Sainovic et al.*
31. 09/09 *Sainovic et al.*
32. 11/09 *Sainovic et al.*
33. 11/09 *Sainovic et al.*
34. 14/09 *Sainovic et al.*
35. 17/09 *Sainovic et al.*
36. 18/09 *Sainovic et al.*
37. 22/09 *Sainovic et al.*
38. 22/09 *Sainovic et al.*
39. 25/09 *Lukic & Lukic*
40. 29/09 *Sainovic et al.*
41. 01/10 *Sainovic et al.*
42. 05/10 *Haradinaj et al.*
43. 08/10 *D. Milosevic*
44. 20/10 *Haradinaj et al.*
45. 20/10 *Haradinaj et al.*
46. 30/10 *Lukic & Lukic*

Total number of decisions and orders rendered = 99

Enclosure VIII

International Tribunal for the Former Yugoslavia trial schedule (working document)

as at 9 November 2009



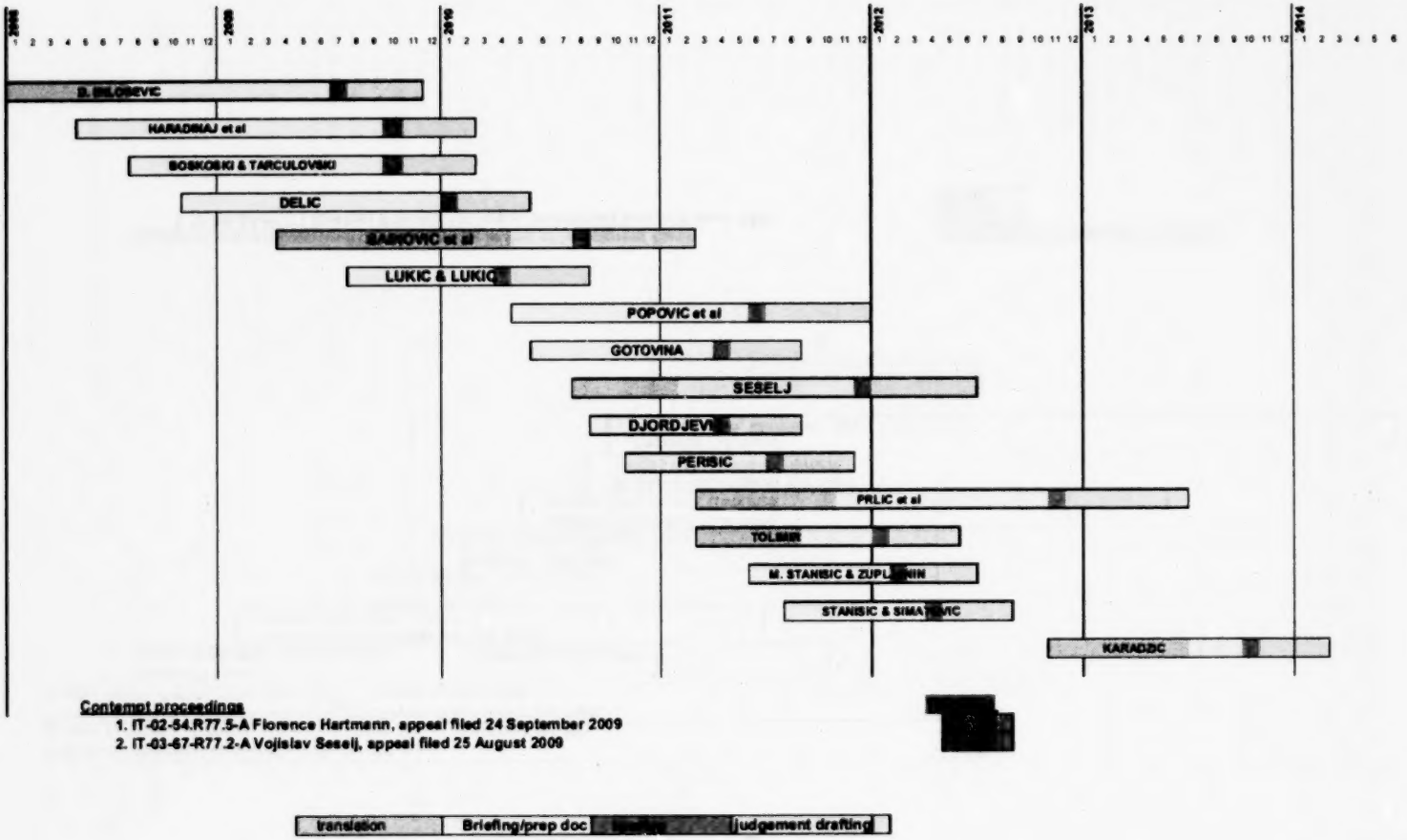
Contempt proceedings (indictment or order in lieu of indictment filed):
1. IT-04-84-R77.1 Shefqet Kabashi (at large), indictment issued 8 June 2007

Fugitives: To be tried upon arrest

Enclosure IX

International Tribunal for the Former Yugoslavia appeal schedule (working document)

based on 9 November 2009 trial schedule



Enclosure X

International Criminal Tribunal for Rwanda appeal schedule (working document)

ICTR appeals schedule: 3 Nov 2009